

Senate Study Bill 3172 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON HOGG)

A BILL FOR

1 An Act relating to standards for and certification and
2 inspection of children's residential facilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 237C.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Administrator*" means the administrator of that division
5 of the department designated by the director of human services
6 to administer this chapter or the administrator's designee.

7 2. "*Child*" or "*children*" means an individual or individuals
8 under eighteen years of age.

9 3. "*Children's residential facility*" means a private
10 facility designed to serve children who have been voluntarily
11 placed for reasons other than an exclusively recreational
12 activity outside of their home by a parent or legal guardian
13 and who are not under the custody or authority of the
14 department of human services, juvenile court, or another
15 governmental agency, that provides twenty-four hour care,
16 including food, lodging, supervision, education, or other care
17 on a full-time basis by a person other than a relative or
18 guardian of the child, but does not include an entity providing
19 any of the following:

20 a. Care furnished by an individual who receives the child of
21 a personal friend as an occasional and personal guest in the
22 individual's home, free of charge and not as a business.

23 b. Care furnished by an individual with whom a child has
24 been placed for lawful adoption, unless that adoption is not
25 completed within two years after placement.

26 c. Child care furnished by a child care facility as defined
27 in section 237A.1.

28 d. Care furnished in a hospital licensed under chapter
29 135B or care furnished in a health care facility as defined in
30 section 135C.1.

31 e. Care furnished by a juvenile detention home or juvenile
32 shelter care home approved under section 232.142.

33 f. Care furnished by a child foster care facility licensed
34 under chapter 237.

35 g. Care furnished by an institution listed in section 218.1.

1 *h.* Care furnished by a facility licensed under chapter 125.

2 *i.* Care furnished by a psychiatric medical institution for
3 children licensed under chapter 135H.

4 4. "*Department*" means the department of human services.

5 Sec. 2. NEW SECTION. **237C.2 Purpose.**

6 It is the policy of this state to provide appropriate
7 protection for children who are separated from the direct
8 personal care of their parents, relatives, or guardians and,
9 therefore, the purpose of this chapter is to provide for the
10 development, establishment, and enforcement of standards
11 relating to the certification of children's residential
12 facilities.

13 Sec. 3. NEW SECTION. **237C.3 Certification standards —**
14 **consultation with other agencies.**

15 1. The department of human services shall consult with
16 the department of education, the department of inspections
17 and appeals, the department of public health, the state fire
18 marshal, and other agencies as determined by the department
19 of human services to establish certification standards for
20 children's residential facilities in accordance with this
21 chapter.

22 2. Standards established by the department under this
23 chapter shall at a minimum address the basic health and
24 educational needs of children; protection of children from
25 mistreatment, abuse, and neglect; background and records checks
26 of persons providing care to children in facilities certified
27 under this chapter; the use of seclusion, restraint, or other
28 restrictive interventions; health; safety; emergency; and the
29 physical premises on which care is provided by a children's
30 residential facility. The background check requirements shall
31 be substantially equivalent to those applied under chapter 237
32 for a child foster care facility provider.

33 Sec. 4. NEW SECTION. **237C.4 Rules.**

34 1. Except as otherwise provided in this section, the
35 department shall adopt rules pursuant to chapter 17A to

1 administer this chapter.

2 2. A children's residential facility shall be inspected by
3 the state fire marshal or the state fire marshal's designee
4 for compliance with rules relating to fire safety before the
5 department grants or renews a certificate of approval under
6 this chapter. Rules governing fire safety in children's
7 residential facilities shall be promulgated by the state
8 fire marshal pursuant to section 100.1, subsection 5, after
9 consultation with the administrator.

10 3. Rules governing sanitation, water, and waste disposal
11 standards for children's residential facilities shall be
12 adopted by the department of public health pursuant to
13 section 135.11, subsection 12, after consultation with the
14 administrator.

15 4. Rules governing educational programs and education
16 services provided by children's residential facilities shall
17 be adopted by the state board of education pursuant to section
18 282.34.

19 5. In the case of a conflict between rules adopted pursuant
20 to subsections 2 and 3 and local rules, the more stringent
21 requirement applies.

22 Sec. 5. NEW SECTION. 237C.5 Certificate of approval —
23 certification required.

24 A person shall not operate a children's residential facility
25 without a certificate of approval to operate issued by the
26 administrator under this chapter.

27 Sec. 6. NEW SECTION. 237C.6 Certificate application and
28 issuance — denial, suspension, or revocation.

29 1. A person shall apply for a certificate to operate a
30 children's residential facility by completing and submitting to
31 the administrator an application in a form and format approved
32 by the administrator. The administrator shall issue or reissue
33 a certificate of approval if the administrator determines that
34 the applicant is or upon commencing operation will provide
35 children's residential facility services in compliance with

1 this chapter. A certificate of approval is valid for up to one
2 year from the date of issuance for the period determined by the
3 administrator in accordance with administrative rules providing
4 criteria for making the determination.

5 2. The certificate of approval shall state on its face the
6 name of the holder of the certificate, the particular premises
7 for which the certificate is issued, and the number of children
8 who may be cared for by the children's residential facility on
9 the premises at one time under the certificate of occupancy
10 issued by the state fire marshal or the state fire marshal's
11 designee. The certificate of approval shall be posted in a
12 conspicuous place in the children's residential facility.

13 3. The administrator may deny an application for issuance or
14 reissuance of a certificate of approval or suspend or revoke
15 a certificate of approval if the applicant or certificate
16 holder, as applicable, fails to comply with this chapter
17 or the rules adopted pursuant to this chapter or knowingly
18 makes a false statement concerning a material fact or
19 conceals a material fact on the application for the issuance
20 or reissuance of a certificate of approval or in a report
21 regarding operation of the children's residential facility
22 submitted to the administrator. All operations of a children's
23 residential facility shall cease during a period of suspension
24 or revocation. The administrator shall suspend or revoke a
25 certificate of approval of a children's residential facility
26 that fails to comply with section 282.34.

27 **Sec. 7. NEW SECTION. 237C.7 Restricted use of facility.**

28 A children's residential facility shall operate only in
29 a building or on premises designated in the certificate of
30 approval.

31 **Sec. 8. NEW SECTION. 237C.8 Reports and inspections.**

32 The administrator may require submission of reports by a
33 certificate of approval holder and shall cause at least one
34 annual unannounced inspection of a children's residential
35 facility to assess compliance with applicable requirements

1 and standards. The inspections shall be conducted by the
2 department of inspections and appeals in addition to initial,
3 renewal, and other inspections that result from complaints
4 or self-reported incidents. The department of inspections
5 and appeals and the department of human services may examine
6 records of a children's residential facility and may inquire
7 into matters concerning the children's residential facility
8 and its employees, volunteers, and subcontractors relating
9 to requirements and standards for children's residential
10 facilities under this chapter.

11 **Sec. 9. NEW SECTION. 237C.9 Injunctive relief — civil**
12 **action.**

13 1. A person who establishes, conducts, manages, or operates
14 a children's residential facility without a certificate of
15 approval required pursuant to this chapter, or a children's
16 residential facility with a certificate of approval that is not
17 operating in compliance with rules adopted pursuant to this
18 chapter or section 282.34, may be restrained by temporary or
19 permanent injunction from providing children's residential
20 facility services or from other involvement with child care.
21 The action may be instituted by the state or a county attorney.

22 2. The parent or legal guardian of a child who is placed
23 in a children's residential facility, the state, or the school
24 district in which the children's residential facility is
25 located, may bring a civil action seeking relief from conduct
26 constituting a violation of this chapter or section 282.34
27 or to prevent, restrain, or remedy such violation. Multiple
28 petitioners may join in a single action under this subsection.

29 3. If successful in obtaining injunctive relief under this
30 section, the petitioner shall be awarded reasonable attorney
31 fees and court costs.

32 **Sec. 10. NEW SECTION. 237C.10 Notice and hearings —**
33 **judicial review.**

34 The procedure governing notice and hearing to deny an
35 application or suspend or revoke a certificate of approval

1 shall be in accordance with rules adopted by the department.

2 Sec. 11. NEW SECTION. **282.34 Educational programs for**
3 **children's residential facilities.**

4 1. A children's residential facility operating under a
5 certificate of approval issued under chapter 237C shall do all
6 of the following:

7 *a.* Provide an educational program and appropriate education
8 services to children residing in the children's residential
9 facility by contracting with the school district in which
10 the children's residential facility is located, contracting
11 with an accredited nonpublic school, or becoming accredited
12 as a nonpublic school through the standards and accreditation
13 process described in section 256.11 and adopted by rule by the
14 state board of education.

15 *b.* Display prominently in all of its major publications
16 and on its internet site a notice accurately describing the
17 educational program and educational services provided by the
18 children's residential facility.

19 *c.* Include in any promotional, advertising, or marketing
20 materials regarding the children's residential facility
21 available in print, broadcast, or via the internet or by any
22 other means all fees charged by the children's residential
23 facility for the services offered or provided by the children's
24 residential facility and its refund policy for the return of
25 refundable portions of any fees.

26 2. The state board of education shall adopt by rule pursuant
27 to chapter 17A standards for the following:

28 *a.* Educational programs and appropriate educational services
29 provided under this section.

30 *b.* Contracts between children's residential facilities and
31 school districts or accredited nonpublic schools.

32 *c.* Notices displayed in accordance with subsection 1,
33 paragraph "b".

34 3. A contract that fails to comply with any of the
35 requirements of subsection 1, or with standards adopted by the

1 state board of education under subsection 2, is void.

2 Sec. 12. REPEAL. Chapter 237B, Code 2016, is repealed.

3 Sec. 13. REPORT REQUIREMENT. By January 1, 2017, the
4 department of human services, the department of education, the
5 department of public health, and the state fire marshal shall
6 each submit a report to the general assembly concerning their
7 progress in adopting rules as appropriate under sections 237C.4
8 and 282.34, as enacted by this Act.

9

EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
11 the explanation's substance by the members of the general assembly.

12 This bill provides for standards for and certification and
13 inspection of children's residential facilities.

14 Currently, Code section 237B.1 allows the department of
15 human services (DHS) to establish broad facility standards
16 for the protection of children's safety for children served
17 by children's centers, but prohibits the department from
18 establishing program development or oversight standards. The
19 bill repeals and replaces Code chapter 237B with new Code
20 chapter 237C to provide the department with more oversight
21 authority.

22 DEFINITION. The bill defines "children's residential
23 facility" to mean a private facility designed to serve children
24 under the age of 18 who have been voluntarily placed for
25 reasons other than an exclusively recreational activity outside
26 of their home by a parent or legal guardian and who are not
27 under the custody or authority of the DHS, juvenile court,
28 or another governmental agency, and the facility provides
29 24-hour care, including food, lodging, supervision, education,
30 or other care. The bill excludes from the definition care
31 provided by certain individuals, such as personal friends or
32 in circumstances preceding adoption, and care furnished by
33 entities otherwise regulated by a state agency.

34 CERTIFICATION STANDARDS. DHS must at a minimum consult
35 with the departments of education, inspections and appeals,

1 and public health, and the state fire marshal to establish
2 certification standards for children's residential facilities.
3 The standards must at a minimum address the basic health and
4 educational needs of children; protection of children from
5 mistreatment, abuse, and neglect; background and records checks
6 of persons providing care to children in such facilities;
7 the use of seclusion, restraint, or other restrictive
8 interventions; health; safety; emergency; and the physical
9 premises on which care is provided by a children's residential
10 facility.

11 AGENCY RULES. DHS must adopt rules to administer the
12 new Code chapter. The state fire marshal must adopt rules
13 relating to safety in children's residential facilities after
14 consultation with the DHS administrator. Such facilities
15 must be inspected by the state fire marshal or the state
16 fire marshal's designee before the DHS grants or renews a
17 certificate of approval. The department of public health
18 (DPH) must adopt rules governing sanitation, water, and waste
19 disposal standards for children's residential facilities after
20 consultation with the DHS administrator. In the case of a
21 conflict between local rules and rules adopted by the state
22 fire marshal or DPH, the more stringent requirement applies.
23 The state board of education must adopt rules governing
24 educational programs and education services provided by
25 children's residential facilities.

26 CERTIFICATION REQUIREMENTS. A person shall not operate
27 a children's residential facility without a certificate of
28 approval issued by the DHS administrator. A person shall apply
29 for a certificate by completing and submitting to the DHS
30 administrator an application in a form and format approved by
31 the administrator. The administrator shall issue or reissue a
32 certificate of approval if the administrator determines that
33 the applicant is or upon commencing operation will provide
34 children's residential facility services in compliance with the
35 new Code chapter. A certificate of approval is valid for up to

1 one year from the date of issuance for the period determined
2 by the administrator in accordance with administrative rules
3 providing criteria for making the determination.

4 The certificate of approval must state the name of the holder
5 of the certificate, the particular premises for which the
6 certificate is issued, and the number of children who may be
7 cared for by the facility. The certificate of approval must be
8 posted in a conspicuous place in the facility. A children's
9 residential facility shall operate only in a building or on
10 premises designated in the certificate of approval.

11 The administrator may deny an application for issuance or
12 reissuance of a certificate or suspend or revoke a certificate
13 of approval if the applicant or certificate holder fails to
14 comply with the requirements or rules adopted under the new
15 Code chapter or knowingly makes a false statement concerning a
16 material fact or conceals a material fact on the application or
17 in a report submitted to the DHS administrator. All operations
18 of a facility must cease during a period of suspension or
19 revocation. The administrator must suspend or revoke a
20 certificate of approval of a facility that fails to comply
21 with statutory requirements for educational programs at such
22 facilities.

23 **REPORTS AND INSPECTIONS.** The DHS administrator may require
24 submission of reports by a certificate of approval holder
25 and shall cause at least one annual unannounced inspection
26 of a children's residential facility by the department of
27 inspections and appeals. The inspections shall be conducted in
28 addition to initial, renewal, and other inspections that result
29 from complaints or self-reported incidents. The department
30 of inspections and appeals and DHS may examine the facility's
31 records and may inquire into matters concerning the facility
32 and its employees, volunteers, and subcontractors.

33 **INJUNCTIVE RELIEF.** A person who establishes, conducts,
34 manages, or operates a children's residential facility without
35 a certificate of approval, or a facility with a certificate

1 that is not operating in compliance with the bill may be
2 restrained by temporary or permanent injunction from providing
3 services or from other involvement with child care. The action
4 may be instituted by the state or a county attorney.

5 The parent or legal guardian of a child who is placed in such
6 a facility, or the state, or the school district in which the
7 children's residential facility is located may bring a civil
8 action seeking relief from conduct constituting a violation of
9 the bill or to prevent, restrain, or remedy such violation.

10 NOTICE AND HEARINGS — JUDICIAL REVIEW. The procedure
11 governing notice and hearing to deny an application or suspend
12 or revoke a certificate of approval shall be in accordance with
13 rules adopted by DHS.

14 EDUCATIONAL PROGRAMS. A children's residential facility
15 must provide an educational program and appropriate education
16 services to children residing in the facility by contracting
17 with the school district in which the facility is located, or
18 contracting with an accredited nonpublic school, or becoming
19 accredited as a nonpublic school. The facility must display
20 prominently in all of its major publications and on its
21 internet site a notice accurately describing its educational
22 program and educational services, and must include its fees and
23 refund policy in any promotional, advertising, or marketing
24 materials regarding the facility.

25 The state board of education must adopt by rule standards for
26 the educational programs and appropriate educational services
27 provided by such facilities, contracts between such facilities
28 and school districts or accredited nonpublic schools, and
29 notices displayed by a facility. A contract that fails
30 to comply with any of the educational program and services
31 requirements or with standards adopted by the state board of
32 education is void.

33 REPORT REQUIREMENT. By January 1, 2017, DHS, the department
34 of education, DPH, and the state fire marshal must each submit
35 a report to the general assembly concerning their progress in

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1 adopting rules.